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Date: August 4, 2009

Name: John C. Freeman, Esq.

Signature:



PATENT
CASE NO. 12212/39

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application:

Raymond I. Myers

U.S. Patent Application

Serial No.: 10/750,789

Filed: January 2, 2004

For: LENTICULAR REFRACTIVE
SURGERY OF PRESBYOPIA,
OTHER REFRACTIVE ERRORS,
AND CATARACT RETARDATION

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Group Art Unit: 3735

Examiner: David M. Shay

Confirmation No. 1486

STATEMENT OF COMMUNICATION WITH EXAMINER

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

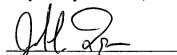
Dear Sir:

On August 4, 2009, the undersigned left a voicemail message and conversed with Examiner Shay regarding the above mentioned application. In the voicemail message and during the telephone conversation, the undersigned noted that the Examiner's Communication mailed on May 4, 2009 with a Notice of Allowance indicated that the Examiner was relying on the above mentioned application having an effective filing date of March 21, 1996 which would render reissue patent RE40,420 not being prior art. The undersigned noted in his message and telephone conversation that priority claims for two

previously filed applications had been granted and that steps were being taken to correct the priority claim of one other earlier filed U.S. Application Serial No. 09/897,585 via petition so that the present application could gain the benefit of the March 21, 1996 filing date. The undersigned further noted that the petition for the '585 application had not been granted and so the Applicant would not be filing the Issue Fee due on August 4, 2009. The undersigned mentioned that a Request for Continued Examination would be filed on August 4, 2009 and would include a request to suspend prosecution of the application for a period of three months so that the final petition regarding the priority issue could be decided on within the three month period. The undersigned added that the Petitions Branch indicated that the '585 application was in Examiner Shay's possession and so the undersigned requested that the '585 application be forwarded to the Petitions Branch so it could finish its review of the petition regarding the '585 application. Examiner Shay agreed to forward the file to the Petitions Branch.

In summary, the undersigned informed Examiner Shay on August 4, 2009 that the Issue Fee would not be paid by the August 4, 2009 deadline since Examiner Shay erroneously assumed that the above mentioned application could properly claim priority to the March 21, 1996 filing date as of the May 4, 2008 mailing of the Notice of Allowance. Applicant is presently in the process of trying to perfect the priority claim via petition and will inform Examiner Shay and the Patent Office when the priority claim has been perfected.

Respectfully submitted,



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Registration No. 34,483
Attorney for Applicant

Date: August 4, 2009

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